1950.

File No. Rules of B

Legal Deptt.

B BRANCH

Subject:—

Rules of Business.

File No. Rules of Business II/50

Gen. 104

CR)

32 B

table suggested by the P. and S. Department as amended

section X on pages 43-44.- The appropriate changes have been ~~shown in~~ the copy of the rules at pages 9 to 41 ante and in the P. and S. Department note at pages 43 to 65 ante.

3. Rule 3, portion A on pages 44-45.- It is true that article 166(3) inter alia empowers the Governor to make rules for the allocation among Ministers of the business of Government in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. Except in Schedule VI to the Constitution, it does not appear that Governor has been empowered to act in his discretion under any of the other provisions of the Constituion. That Schedule relates to the Administration of tribal areas in Assam. Article 163(1) provides for a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is required to act in his discretion under the Constitution; and clause(2) of that Article merely empowers the Governor to decide the question regarding matters in which he is required to act in his discretion. Consequnetly, the view that the discretionary powrrs should be deemed to have been restored to the Governor under Article 163(2) is not correct Rule 3 at page 9 ante is in order and does not require any amendment

4. The redraft of rule 6 on page 47 is, as amended, in order. The proviso to the present rule duly empowers the Premier to direct discussion of any ~~xxxxxxx~~ matters by the Council of Ministers even though the Finance Ministers is not ready for its consideration under exceptional circumstances. The same provision may be continued. The words" the Governor or" have

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The preamble suggested by the P. and S. Department as amended is in order.

2. Portion X on pages 43-44.- The appropriate changes have been shown in the copy of the rules at pages 9 to 41 ante and in the P. and S. Department note at pages 43 to 65 ante.

3. Rule 3, portion A on pages 44-45.- It is true that article 166(3) inter alia empowers the Governor to make rules for the allocation among Ministers of the business of Government in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. Except in Schedule VI to the Constitution, it does not appear that Governor has been empowered to act in his discretion under any of the other provisions of the Constituion. That Schedule relates to the Administration of tribal areas in Assam. Article 163(1) provides for a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is required to act in his discretion under the Constitution; and clause(2) of that Article merely empowers the Governor to decide the question regarding matters in which he is required to act in his discretion. Consequnetly, the view that the discretionary powrrs should be deemed to have been restored to the Governor under Article 163(2) is not correct Rule 3 at page 9 ante is in order and does not require any amendment

4. The redraft of rule 6 on page 47 is, as amended, in order. The proviso to the present rule duly empowers the Premier to direct discussion of any matters by the Council of Ministers even though the Finance Ministers is not ready for its consideration under exceptional circumstances. The same provision may be continued. The words" the Governor or" have

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therefore been deleted from the proviso to the proposed rule 6 on page 47 ante.

5. The draft rule 7 as amended by D.S. P. and aS.D. on pages 47-48 is in order.

6. Since the Governor has not been empowered to act in his discretion under the Constitution in Bombay the existing rule 8 may be retained by substituting "Chief Minister" for "Premier

7. Schedule.

P. and S. Department.

(1) Entries 31 and 32.- The expression "Part B States" may be substituted for "Indian States." As regards entry 33, since all the Indian States now form part of the territory of India, the entry is no longer necessary and may be deleted. (Vide entry 38 under P. and S. Department).

(2) Entry 39.- It is true that there does not appear to be any corresponding entry in any of the Lists in the Seventh Schedule to the Constitution. But the subject-matter of that entry viz. 39 is covered by entry 28 in List II[1] and entry 10 in List II. These subjects are at present administered by R.D. (entry 35) and by L.S.G. and P.H. Department (entry4). The entry may however,be retained for the present as desired by P. and S. Department.

(3) Entry 41.- The entry on page 49 as amended by D.S. P. and S. Department is in order.

(4) Entry 54.- In view of proposed entry 44 on p. 49 ante, entry, 54 does not appear to be necessary and may be omitted, except the provision regarding "Foreign Missionaries in India."

Home Department (Proper).

(5) Entry 1 may be amended as under :-

"Public Order (but not including the use of Naval, Military or air force or any other armed forces of the Union in aid of the Civil power)."

Home Department (Political).

(6) Entry 7 may be as follows of entry 3 in list III):-

"7. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention, including --

(the rest as in the existing entry 7)".

Revenue Department.

(7) Entry 2 may be as follows :-

"2. Acquisition or requisitioning of property except for purposes of the Union; principles on which compensation for property acquired or requisitioned for the purposes of the State or for any other public purpose is to be determined and the form and manner in which such compensation is to be given (cf. entry 36 in List II and entry 42 in List III). No change however, in entry 41 on p. 21 ante in necessary.

(8) Entry 3. For the words "alienation and devolution" the words "and alienation" may be substituted.

As regards the proposal to insert the words "relief of agricultural indebtedness, P. and S. Department is requested to consider whether it is necessary to insert the said words in view of Entry 13 of the List of subjects allotted to the Development Department.

(9) Entry 5 may be as follows :-

5. Intoxicating liquors, that is to say the production manufacture, possession, transport, purchase and sale of intoxicating liquors.

Drugs and poisons, subject to the provisions of entry 59 in List I with respect to opium. Prohibition of use of intoxicating liquors and drugs for purposes of consumption.

(10) Entry 8.- For "non-narcotic drugs (c)" the words "but not including" should be substituted.

Finance Department.

The following may be added to entry 5 on p. 25 ante:-

Money Bills, Appropriation Bills and law relating

to the Consolidated Fund of the State.

Education Department.

(11) Entry 4.- As the Criminal Tribes Act, 1924, has been repealed in its application to this Province by the Bombay Habitual Offenders Act, 1948, the words "Habitual Offenders may be substituted for "Criminal Tribes."

(12) Entry 5.- This entry may be as follows :--

"5. Administration of Schedules Tribes and Scheduled areas." (cf. article 244 and Fifth Schedules).

Public Works Department.

(13) Entry 9. P.and S. Department is requested to consider whether this entry may not be recast on the lines of entry 32 in List III instead of entry 24 in List I as suggested by P. and S. Department on p. 55.

Development Department.

(14) Entry 2.- With respect to the proposed addition to this entry, attention of the P. and S. Department is invited to entry 12 in List of subjects allotted to Revenue Department.

8. Instructions.

(15) Since the General Clauses Act will apply for interpretation of these instructions the definitions of "the Constitution" and "Central Government" are not necessary and may be deleted.

(16) In view of para 3 above in instructions 1(iv), 5 and 7(d), the reference to the Governor is not necessary.

(17) Instructions 26 and 30.- No amendment is necessary.

Instructions 40.- In view of the position explained in para 3 above, the view taken by P. and S. Department is not correct. No change in the existing entry 40 is necessary and no instruction as suggested at X on P. 65 ante is necessary.

Subject to the above observations, the other amendments suggested by the P. and S. Department are in order.

Sd.

Additional Secretary to Government.

U.R. to P. and S. Department through the E.d. V. ...

As observed in paragraph 2 of the R.L.A.'s opinion No. 3792 dated the 19th April 1948, the really relevant stage of preparing a financial memorandum is naturally before the tentative draft is prepared by the Legal Department. Under Instruction 23(1), if the legislation is decided upon by the Minister-in-Charge the papers shall be sent to the R.L.A. requesting him to draft a Bill accordingly. Legal Department prepares a tentative draft Bill on the propositions approved by Government and it will be for the department dealing with the legislation to consider if the propositions involve any expenditure from the Consolidated Fund of the State. The R.L.A. while drafting the Bill does not interfere with the broad principles of the legislation and the Finance Department should not find it difficult to judge the exact financial implications of the measure approved by the Department concerned. If necessary, the Instructions issued under the Rules of Business may be further amended so as to provide for the sending of the finalised Bill to the Finance Department for revising the financial memorandum. In that case, it would be necessary to amend Instruction 23 by susbtituting paragraph (1) and (6) as follows:-

"23(1) If the legislation is decided upon by the Minister-in-Charge the Department will, if the legislation involves expenditure from the Consolidated Fund of the State, prepare in Consultation with the Finance Department, the financial memorandum. The papers shall then be sent to the R.L.A. requesting him draft the Bill accordingly.

"(6) The Remembrancer of Legal Affairs shall then finalise the draft and send a draft Bill to the originating Department indicating at the same time the sanctions, if any, required for the Bill. If any provisions in the Bill involving expenditure from the Consolidated

Fund of the State are modified in the finalised draft the Department shall send the finalised draft Bill to the Finance Department for revising if necessary the financial memorandum."

2. The second proposal of the Finance Department to amend Instruction 27(2) in the manner suggested in paragraph 6 of its note at page 45 is in order. It is presumed that Government do not want a non-official member of the legislature to attach a financial memorandum to the Bill of which he gives notice. If it decided that a non-official member should attach a financial memorandum to his Bill, the proper way to achieve the subject will be to make a provision in the Rules of Legislature.

3. As regards the P.&.S.D. note at page 48, no difficulty has so far been felt, as stated in the L.D.U.R. No.1289 dated the 3rd February 1949, regarding proposals for legislation and it is not necessary to issue any circular explaining the procedure to be followed in connection with any such proposals. In any case it is necessary to wait till the rules of business which are under revision by the P.&.S.D. in view of the Constitution of India are finalised and re-issued.

Sd. P.N.Lad.
18/1

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. ~~811~~ 871, dated the 19th January 1950.

VGP. 27-6-56.

Legal Department.

Revised draft amendments to the Instructions 23 and 27 are sent herewith.

2. Since in the case of a non-official Bill the Statement of Objects and Reasons is already signed by the member concerned., it would not be feasible to include the financial memorandum in the S.O.R. to such Bill. The words "to be included in the S.O.R. " have therefore been deleted from the draft amendment of Instruction 27.

Sd. J.R.Dhurandhar,
15/2

Additional Secretary to Government.

U.R. to F.D. No. 2177 dated the 14th February 1950.

VGP. 27-6-56.

Instruction No. 40 of the Instructions issued under the Rules of Business made under article 166 of the Constitution provides that the amendment of the High Court Rules and Orders is to be submitted to the Governor before the issue of orders. The case relating to the issue of the circular, proposed by the High Court will have to be submited to the Governor so long as the instruction is in force. The second case relating to the pay of stenographers in the High Court should not be submitted. It does not fall under instruction No 40.

Sd. J.R.Dhurandhar.
8/9

Additional Secretary to Government

Since the Governor of Bombay has already made the Rules under clauses (1) and (3) of article 166 and these Rules have provided for authentication of orders and instruments made by the Government by a Secretary and other officers specified in Rule 12 (of the Rules of Business), no action as indicated in the Government of India letter (p. 1.ante) is necessary.

Sd. J.R.Dhurandhar.
21/4

Additional Secretary to Government.

U.R. to P.&.S.D. No. 16274, dated the 21st Nov. 1956

VGP. 28-6-56.